

2562 ORIGINAL

No. 12104

Docketed

United States
Court of Appeals
for the Ninth Circuit

BEN C. KOEPKE, Individually, and as Area Rent
Director, Los Angeles Defense-Rental Area, Office
of Rent Control, Office of the Housing Expediter,
Appellant,

VS.

J. FONTECCHIO,

Appellee.

Transcript of Record

FILED

Appeal from the United States District Court
for the Southern District of California
Central Division

FEB - 1 1949

PAUL P. O'BRIEN,
CLERK

No. 12104

United States
Court of Appeals
for the Ninth Circuit

BEN C. KOEPKE, Individually, and as Area Rent
Director, Los Angeles Defense-Rental Area. Of-
fice of Rent Control, Office of the Housing Ex-
pediter,

Appellant,

vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Los Angeles 5, California. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the Superior Court of the State of California in
and for the County of Los Angeles

No. 540994

J. FONTECCHIO,

Plaintiff,

vs.

BEN C. KOEPKE, individually, and as Area Rent
Director, Los Angeles Defense-Rental Area,
Office of Rent Control, Office of the Housing
Expediter,

Defendant.

COMPLAINT

(Declaratory Relief and Injunction) and Points
and Authorities

Plaintiff complains of defendant, and alleges:

I.

Since January 1, 1947, plaintiff has been and is now the owner of the real property known as 8012-8014 South Vermont Avenue, Los Angeles, California, and of the various housing accommodations, situated in and upon the same.

II.

Defendant is the duly appointed, qualified and acting Area Rent Director for the Los Angeles Defense-Rental Area, Office of Rent Control, Office of the Housing Expediter, an Agency of the United States Government, and has been since July 1, 1947, and now is administering the Housing and Rent Act of 1947, and the rent regulation for controlling rooms in rooming houses and other establishments (12 F.

R. 4302) pursuant to a delegation of authority so to do issued by the Housing Expediter. The real property described in paragraph I is within the territorial limits of the Los Angeles Defense-Rental Area.

III.

On or about March 1, 1947 all of the housing accommodations in and upon the premises above described were vacated by the persons who theretofore had been plaintiff's tenants, and plaintiff proposed to convert said housing accommodations and to use them in [2] the conduct of the business of a motor court. At that time plaintiff consulted with Officials of the Office of Temporary Controls, an agency of the United States then engaged in administering the emergency price control act of 1942 as amended and extended, and was advised by them that it was permissible for him under said act and under the regulations promulgated thereunder to use them in the business of conducting a motor court.

IV.

After receiving this advice from officials of the Office of Temporary Controls plaintiff proceed to, and did convert said housing accommodations and made eight housing units out of what had been four units, so arranging them that half of the units consisted of a bedroom and kitchen, while the other half consisted of a sleeping room only, and in addition, so arranging them that the occupants of each of said units had access to and shares the use of the bathroom. Each of the said units had a separate entrance.

Immediately adjacent to the accommodations is 4,000 square feet of parking space, black topped, and in addition there are five (5) garages on the rear of the lot which can be and are used, as well as the parking space, by guests of the motor court.

The alterations necessary to convert these accommodations and to create additional accommodations by such conversion was commenced after February 1, 1947, and was not completed until approximately October 1, 1947.

Prior to commencing operation as a motor court, affiant purchased a neon sign, reading "Motel", which is placed in front of the property next to that part of the property in which affiant lives and which affiant also uses as the manager's office.

Since October 1, 1947, occupancy of the said units has been almost exclusively transient, thus in October 1947, 40 different guests stayed one day, 4 stayed five days, and 2 stayed six days. In November 1947, 33 stayed one day, 11 stayed two days, 2 stayed [3] three days, 2 stayed four days, 9 stayed five days, and 2 stayed six days.

In December 1947, 25 stayed one day, 16 stayed two days, and 14 stayed five days.

In January 1948, up to January 24, 1948, 42 stayed one day, 8 stayed two days, 1 stayed three days and 12 stayed five days.

Affiant furnishes furniture, linen, soap, and cleans each unit each day.

Affiant operates said accommodations in all respects as any other motor court is operated in Southern California.

Said premises are within the City of Los Angeles and constitute a group of detached buildings containing individual sleeping and living units designed for and used temporarily by automobile tourists and transients, with garage attached and parking space conveniently located to each unit.

V.

On July 1, 1947, the Act and the regulation above referred to in paragraph II became effective and each is still in effect. The Act applied only to controlled housing accommodations and excluded from that category any motor court, or any part thereof. (Sec. 202 (c) (2). The regulation, in identical language, excluded such accommodations from its scope.

VI.

Plaintiff contends that by reason of the foregoing facts said housing accommodations are not subject to the Housing and Rent Act of 1947, nor to any regulations or order issued by the Housing Expeditor, or to any order issued by defendant in the exercise of his delegated authority. Defendant contends that by reason of the foregoing facts said housing accommodations are subject to the Act, and to regulations or orders issued thereunder by the Housing Expeditor or by defendant in the exercise of his delegated authority.

VII.

On January 20, 1948, in proceedings in defendant's office, [4] described as Docket 262021, defendant issued and mailed to plaintiff a notice in writing advis-

ing him that defendant proposed to issue an order fixing maximum rents for the said housing accommodations.

VIII.

On or about January 30, 1948, plaintiff filed objections to the issuance of any such order setting forth the facts pleaded above, and filed also an application for decontrol.

IX.

On February 9, 1948, in the same numbered proceedings, defendant issued and mailed to plaintiff notice in writing advising him that defendant proposed to deny plaintiff's application for decontrol on the ground that the establishment was not considered a motor court on June 30, 1947. Plaintiff objected to the proposed order denying his application for decontrol, stating again the facts pleaded above, but defendant continues to maintain his position that said housing accommodations were not decontrolled by the said Act and proposes to issue said order on the 19th day of February 1948, and has refused to suspend the issuance of said order until such time as the matter can be brought before this court for hearing and decision.

X.

Unless restrained and enjoined therefrom by this court, defendant threatens to and will do the following things:

- (a) Issue an order purportedly fixing a maximum rent for said housing accommodations;
- (b) Direct the commencement and commence an

action against plaintiff to attempt to restrain and enjoin plaintiff from demanding or receiving from the guests in said motor court any amounts in excess of those fixed by defendant's order.

XI.

Defendant's contention in the premises is made at the express direction of the Regional Rent Director, defendant's [5] immediate superior in the Agency, and at the express direction of the Housing Expediter. Plaintiff is informed and believes, and therefore alleges that any request to the Regional Rent Administrator to review defendant's order, or any appeal from defendant's order or from the Regional Rent Administrator's order on review of defendant's order, to the Housing Expediter, or to the Acting Housing Expediter would be of no avail and would result in the affirmance by them of defendant's order. In any event, it is and has been the policy of the Housing Expediter, that, even in the event of reversal of an Area Rent Director's order, the order of reversal takes effect only upon its issuance. As a result of this policy plaintiff would still be required to make a refund, or be subject to treble damage liability from the date of the issuance of said order and thereafter until the issuance of the reversing order if plaintiff did not voluntarily abandon the collection of the rent agreed to be paid by his tenants. Plaintiff is informed and believes, and therefore alleges that if said order issued as proposed the guests of said housing accommodations would refuse to pay rent in excess of the amount specified therein and it would

become necessary for plaintiff to bring successive actions at law to recover the rents to which he is and will be entitled, or to bring successive actions in unlawful detainer to evict the present guests of said housing accommodations, or future guests of said housing accommodations, for non-payment of rent, and in each of said actions each of said guests would contend that said order issued by defendant was valid and prevented a recovery by plaintiff in such actions.

XII.

Plaintiff is collecting rentals from guests of said housing accommodations at the rate of approximately \$35.00 per day, and if said order is issued it will purport to reduce the amounts which plaintiff may lawfully charge and collect from said [6] guests to approximately \$12.00 per day, and by the issuance of said order plaintiff will suffer irreparable injury.

Wherefore, plaintiff prays judgment as follows:

(1) That a temporary restraining order, and a preliminary and final injunction issue restraining and enjoining defendant, his agents, servants and employees, and all persons acting in concert with him from issuing or purporting to issue the proposed or any order fixing or purporting to fix a maximum rent for housing accommodations located 8012-8014 South Vermont Avenue, Los Angeles, California, and from making or purporting to make any order effective to establish a maximum rent for said housing accommodations, and from doing any act, by commencing or directing the commencement of any action to, or taking any proceedings looking toward, compulsion

of plaintiff to make any refund to any guest of said housing accommodations on account of occupancy thereof by such guests, or requiring plaintiff to comply with any such order with respect to said housing accommodations, and from taking any other or proceeding, or doing any act to enforce any such order;

(2) That an Order to Show Cause issue ordering defendant to show cause, if any he has, at a date, place and time fixed by the court, why a preliminary injunction should not issue against him restraining him during the pendency of this action from doing any of the acts specified in (1) above;

(3) That this court declare the respective rights and duties of the parties hereto under the Act and regulations with respect to housing accommodations known as 8012-8014 South Vermont Avenue, Los Angeles, California, and particularly that this court declare that defendant has no power, authority or jurisdiction to issue any order of any kind with respect thereto:

(4) For plaintiff's costs of suit herein; and

(5) For such other and further relief as may to the court [7] seem meet and just in the premises.

BENT AND CLAPP,
By AUSTIN CLAPP,
Attorneys for Plaintiff.

POINTS AND AUTHORITIES

The statute itself excludes from the category of controlling housing accommodations, and consequently from its application, any motor court, or any part thereof.

Housing and Rent Act of 1947, Pub. L. 129, 80th Cong., Sec. 202 (c) (3) (b).

The prohibitions of the Act, and the regulation of evictions thereunder, expressly relate only to "Controlled" housing accommodations.

Housing and Rent Act of 1947, Secs. 204 (b), 206 (a), 209 (a).

The Housing Expediter's authority (and necessarily that of his subordinates) is expressly limited to regulations and orders "consistent" with the Act.

Housing and Rent Act of 1947, Sec. 204 (d).

An injunction may be granted against a public officer when it appears that the officer is acting illegally.

Brock v. Superior Court, 11 Cal. (2d) 682, 81 Pac. (2d) 931.

Loftis v. Superior Court, 25 Cal. App. (2d) 346, 77 Pac. (2d) 491.

And a temporary injunction may be granted under such circumstances.

Agricultural Prorate Commission v. Superior Court, 31 Cal. App. (2d) 518, 88 Pac. (2d) 253.

Where it is apparent that resort to administrative remedies would be useless, an action for injunction is not [8] premature because of failure to resort to such remedies.

Cammeren v. Fresno, 51 Cal. App. (2d) 235, 124 Pac. (2d) 621.

A Fortiori, this is so, where the reviewing body has no more jurisdiction than the inferior agency.

Where an agent of the Government acts without

authority . . . he ceases to act in an official capacity and a suit against him is not a suit against the Government. . . . It follows that the exemption of the Government from suit does not exempt or protect its officers from being sued when they are proceeding without authority . . .

Oklahoma v. Guy F. Atkinson Co., et al., 37 F. S. 93, at pages 96; affirmed 313 U. S. 508, 61 S. Ct. 1050, 85 L. Ed. 1487.

State of California,
County of Los Angeles—ss.

J. Fontecchio being by me first duly sworn, deposes and says: that he is the plaintiff in the above-entitled proceeding that he has read the foregoing Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon—information or belief, and as to those matters that he believes it to be true.

J. FONTECCHIO.

Subscribed and sworn to before me this 19th day of February, 1948.

[Seal] AUSTIN CLAPP,
Notary Public in and for said County and State
of California.

Filed Feb. 19, 1948.

[Endorsed]: Filed Mar. 26, 1948. [9]

In the District Court of the United States, Southern
District of California, Central Division

No. 8078—PH

J. FONTECCHIO,

Plaintiff,

vs.

BEN C. KOEPKE, Individually, and as Area Rent
Director, Los Angeles Defense-Rental Area, Of-
fice of Rent Control, Office of the Housing Ex-
pediter,

Defendant.

ANSWER

Comes now the defendant and for answer denies,
admits and alleges as follows:

I.

Basing his denial on lack of information and belief, defendant denies all of the allegations of Paragraph I of the complaint, except that defendant alleges that plaintiff has dealt with the Office of the Housing Expediter at Los Angeles as landlord of the housing accommodations located at 8012 to 8014 South Vermont Avenue, Los Angeles, California, and that on October 14, 1947, the plaintiff filed a Certificate of Registration with the Office of the Housing Expediter for housing accommodations located at said address on the form provided by the Office of the Housing Expediter for housing accommodations subject to the Rent Regulation for Controlled Rooms in Rooming Houses and other establishment; [19] and except that defendant al-

leges that at other times plaintiff has filed a Certificates of Registration with the Office of the Housing Expediter at Los Angeles on the form provided by said Office for accommodations subject to the Rent Regulations for Controlled Housing, said registration certificates relating to the housing accommodations located at 8012, 8012 $\frac{1}{4}$, 8012 $\frac{1}{2}$, 8012 $\frac{3}{4}$, 8012 $\frac{7}{8}$, 8014, 8014 $\frac{1}{4}$, 8014 $\frac{1}{2}$, 8014 $\frac{3}{4}$ South Vermont Avenue, Los Angeles, California.

II.

Answering Paragraph II of the complaint, defendant admits that he is the duly appointed, qualified and functioning Area Rent Director of the Los Angeles Defense Rental Area, Office of the Housing Expediter, an instrumentality of the United States, authorized by the Housing and Rent Acts of 1947 and 1948. Defendant admits that he has been since July 1, 1947, and now is administering the Housing and Rent Acts of 1947 and 1948 and the Controlled Housing Regulation and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments as issued and amended pursuant to said Acts in said defense rental area but alleges that he is administering said acts and regulations only to the extent that he is authorized to do so by the rent and procedural regulations issued pursuant to said acts and the provisions of the manual of operations of the Office of Housing Expediter, particularly Section 12-1600 thereof and pursuant to the provisions of Housing Expediter Rent Control Order No. 1 issued

May 2, 1947, by Housing Expediter Frank Creedon and effective May 4, 1947. Defendant admits that the property described in Paragraph I of the complaint is within the Los Angeles Defense Rental Area. Except as admitted in the foregoing portion of this paragraph the defendant denies all of the allegations of Paragraph II of the complaint.

III.

Answering Paragraph III of the complaint, and basing his denial on lack of information and belief, defendant denies all of the allegations of said paragraph.

IV.

Answering Paragraph IV of the complaint, and basing his denial on lack [20] of information and belief, the defendant denies all of the allegations of said paragraph.

V.

Answering Paragraph V of the complaint, defendant admits that the Housing and Rent Act of 1947 and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments became effective July 1, 1947, and are still in effect as amended. Defendant admits that the Housing and Rent Act of 1947 as amended by the Housing and Rent Act of 1948 excluded from controlled housing accommodations those housing accommodations which were motor courts or any part of motor courts on June 30, 1947. Defendant admits that the Controlled Housing Rent Regulation does

not apply to housing accommodations in establishments which were motor courts on June 30, 1947. Defendant admits that the regulation for controlled rooms in rooming houses and other establishments does not apply to rooms in establishments which were motor courts on June 30, 1947. Except as admitted in the foregoing portion of this paragraph, defendant denies all of the allegations of Paragraph V of the complaint.

VI.

Defendant admits that plaintiff makes the contentions set forth in Paragraph VI of the complaint but defendant denies the contentions thus alleged. To the contrary, the defendant contends that the Housing accommodations described in the complaint are subject to the Housing and Rent Act of 1947, to said Act as amended in 1948, and to said Rent Regulations issued pursuant thereto and any orders issued or which might be issued pursuant to said Regulations. However, defendant denies plaintiff's allegations concerning said housing accommodations except to the extent admitted in the foregoing portions of this Answer. Except as admitted in the foregoing portion of this paragraph defendant denies all of the allegations of Paragraph VI of the complaint.

VII.

Answering Paragraph VII, defendant alleges that on January 20, 1948, under docket No. 262021, defendant issued and mailed to plaintiff a notice

in writing advising him that defendant proposed to issue an order fixing maximum rents for the housing accommodations located at 8012-8014 South Vermont [21] Avenue, Los Angeles, California, described as Room Numbers 1 to 9, inclusive. Except as admitted in the foregoing portions of this paragraph, defendant denies all of the allegations of Paragraph VII of the complaint.

VIII.

Answering Paragraph VIII of the complaint, defendant denies that plaintiff filed objections to the issuance of the proposed order referred to in Paragraph VII of this Answer. Defendant alleges that on February 4, 1948, plaintiff filed an "Application for decontrol of accommodations in hotels and tourist homes" for the housing accommodations at 8012-8014 South Vermont Avenue, Los Angeles, California. Except as admitted in the foregoing portions of this paragraph, defendant denies all of the allegations of Paragraph VIII of the complaint.

IX.

Answering Paragraph IX of the complaint, defendant admits that about February 9, 1948, it mailed to plaintiff a notice in writing advising plaintiff that a preliminary investigation and other available information indicates that all units in the aforesaid housing accommodations are not decontrolled, that if no reply and supporting evidence is filed within ten days, the Rent Director may enter an order setting forth ineligibility for

decontrol. Defendant admits that he continues to contend that said housing accommodations are not decontrolled. Except as admitted in the foregoing portions of this paragraph, defendant denies all of the allegations of Paragraph IX of the complaint.

X.

(a) Answering Sub-paragraph X (a) of the complaint, defendant admits the allegations thereof.

(b) Answering Sub-paragraph X (b) of the complaint, defendant denies all of the allegations thereof.

XI.

Answering Paragraph XI of the complaint, defendant admits that his interpretation of said acts and regulations set forth in the foregoing portions of this Answer is made at the direction of the Housing Expediter. Defendant denies that as a general rule appeals and reviews provided for by Rent Procedural [22] Regulation No. 1 from Rent Director's orders governing individual housing accommodations are of no avail and would result in affirmance of the orders, and alleges the Area Rent Director has been reversed in administrative appeal and review proceedings, but is unable to foresee the action of the Regional Administrator or Housing Expediter should an appeal or review be taken from the order establishing maximum rents which defendant proposes to issue. Basing his denial on lack of information and belief, defendant denies that such order would be affirmed. Defend-

ant denies that in all cases the orders of reversal on administrative appeal or review of a Rent Director's order takes effect only prospectively. Defendant is informed and believes and on such information and belief, alleges that if it should be held on administrative appeal or review that the Rent Director was not entitled on a correct view of the law to issue an order fixing the maximum rent of said housing accommodations, the order of reversal would reverse the Rent Director's order from the date of issuance of the latter order, and in that event plaintiff would be under no legal obligation by reason of the issuance of the order. Defendant lacks sufficient information and belief on which to deny or admit and on that ground denies that by reason of the issuance of the order the tenants of said apartments would refuse to pay rent in excess of the amount specified therein. Defendant lacks sufficient information and belief on which to deny or admit and on that ground denies that because of the issuance of said order it would become necessary for plaintiff to bring successive actions at law to recover the rents to which he is and will be entitled or to bring successive actions in unlawful detainer to evict the present tenants of said housing accommodations, or future tenants of said accommodations for non-payment of rents and that in each of said actions each of said tenants would contend that said order issued by defendant was valid and prevented a recovery by plaintiff in such actions. Except as admitted in the fore-

going portions of the paragraph, defendant denies all of the allegations of Paragraph XI.

XII.

Defendant denies all of the allegations of Paragraph XII of the complaint. [23]

Wherefore, defendant prays that plaintiff take nothing by his complaint and that defendant be permitted to go hence with its costs of suit.

Dated: Los Angeles, California, this 14th day of May, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
BENJAMIN CHAPMAN,
RICHARD G. SOLOF,

By /s/ BENJAMIN CHAPMAN,
Attorneys for Defendant.

(Duly Verified.)

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed May 14, 1948. [24]

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Plaintiff hereby moves the Court for summary judgment declaring that the premises described in the complaint are and have been a motor court as defined in the Housing and Rent Acts of 1947 and 1948 since the 1st day of October, 1947, and that

the same are not "controlled housing accommodations" within the meaning of the said Acts.

Plaintiff also moves the Court for an injunction against the defendant, his agents, servants and employees and all persons acting in concert with him from issuing or purporting to issue a proposed or any order fixing or purporting to fix a maximum rent for housing accommodations located at 8012-8014 $\frac{7}{8}$ South Vermont Avenue, Los Angeles, California, and from making or [27] purporting to make any order effective for establishing a maximum rent for said housing accommodations and from doing any act, by commencing or directing the commencement of any action to, or taking any proceedings looking toward, compulsion of plaintiff to make any refund to any guest of said accommodations on account of occupancy thereof by such guests, or requiring plaintiff to comply with any such order with respect to said accommodations, and from taking any other step or proceeding, or doing any act to enforce any such order.

This motion will be made and based upon this motion, upon all the records and files of the above-entitled action and upon the affidavits of J. Fontecchio and Austin Clapp served and filed herewith.

Dated this 27th day of May, 1948.

BENT AND CLAPP,
By /s/ AUSTIN CLAPP,
Attorneys for Plaintiff.

[Endorsed]: Filed May 28, 1948. [28]

[Title of District Court and Cause.]

EXHIBIT No. 1

AFFIDAVIT OF BEN C. KOEPKE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

State of California,
County of Los Angeles—ss.

I, Ben C. Koepke, having been first duly sworn, depose and say as follows:

That I am Area Rent Director for the Los Angeles Defense Rental Area Office of the Office of the Housing Expediter. As such Area Rent Director it is not within my authority nor within my scope of duties to commence or direct the commencement of action or legal proceedings for the purpose of compelling refund to the tenant or tenants of rent collected in excess of the maximum rent which might be established under any order which I might issue, or for the purpose of restraining the collection of such rents. My authority and scope of my duties in such matters goes only so far as to receive and investigate complaints or information concerning violations of the Housing and Rent Acts and Regulations issued pursuant thereto and in appropriate cases to refer such matters to the Litigation Unit of the Office of the Housing [52] Expediter for their consideration and action. I have no intention of exceeding my authority or the scope of my duties in connection with the housing accommodations involved in this suit.

Dated: Los Angeles, California, this 4th day of June, 1948.

/s/ BEN C. KOEPKE,
Area Rent Director.

Subscribed and sworn to before me this 4th day of June, 1948.

/s/ SAMUEL R. GARB,

Notary Public in and for the State of California,
County of Los Angeles.

My commission expires February 4, 1949.

[Endorsed]: Filed June 4, 1948. [53]

[Title of District Court and Cause.]

SUPPLEMENTAL AFFIDAVIT OF J. FON-
TECCHIO IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

State of California,
County of Los Angeles—ss.

J. Fontecchio, being first duly sworn, deposes and says:

That on or about the 26th day of May, 1948, three representatives of the Office of the Housing Expediter visited affiant's premises at 8008-8014 $\frac{3}{4}$ South Vermont Avenue in the City and County of Los Angeles, State of California, and inspected the housing accommodations on said premises. Affiant is informed and believes and therefore states that said persons also talked to a number of per-

sons occupying the premises situate in and near affiant's said premises.

On the day following the visit by these three persons [54] one J. E. McCurdy, an employee of the Office of the Housing Expediter, also visited and inspected said premises.

(Duly Verified.)

(Acknowledgment of Service.)

[Endorsed]: Filed June 7, 1948. [55]

[Title of District Court and Cause.]

SUPPLEMENTAL AFFIDAVIT OF AUSTIN
CLAPP IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

State of California,

County of Los Angeles—ss.

Austin Clapp, being first duly sworn, deposes and says:

That Abe I. Levy, Stephen D. Monahan, Frank L. Hirst, Richard G. Solof and Benjamin Chapman are attorneys employed by the Los Angeles office of the Office of the Housing Expediter and are members of the litigation unit of the Los Angeles office of the Office of the Housing Expediter. These attorneys also appear for the defendant Ben C. Koepke in the above-entitled action.

If the defendant Ben C. Koepke were to issue an order fixing maximum rents for the accommodations described in the complaint herein and if any guest of the plaintiff residing in said [58] housing accommodations were to make inquiry of

defendant, his agents, servants and employees relating to the propriety of a charge made by plaintiff to said guest in excess of the amount stated in such order, said complaint of said guest would be referred by defendant to the said attorneys for action.

On May 25, 1948, at the request of affiant, J. E. McCurdy then and there an employee of the Los Angeles office of the Office of the Housing Expediter, examined at affiant's office the registration cards which are referred to and summarized in the affidavit of J. Fontecchio in support of his motion for summary judgment.

/s/ AUSTIN CLAPP.

Subscribed and sworn to before me this 7th day of June, 1948.

/s/ EDMUND L. SMITH,

Clerk of the United States
District Court.

(Acknowledgment of Service.)

[Endorsed]: Filed June 7, 1948. [59]

[Title of Cause.]

Hall, Judge.

MINUTE ORDER

There is no genuine issue as to any material fact. The issues raised are of law only and are resolved in favor of the plaintiff. Accordingly, plaintiff's motion for a Summary Judgment is granted. Plaintiff's counsel will prepare appropriate order and judgment.

[Endorsed]: Filed July 19, 1948. [61]

[Title of District Court and Cause.]

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

Plaintiff having filed herein his motion for summary judgment in this cause, and both parties, being represented by counsel, having submitted the motion for decision upon all of the records and files of the above-entitled action, including all the affidavits filed therein, and counsel for both parties having submitted briefs, and the Court having fully considered all of said records, files, affidavits and briefs,

It Is Ordered that there is no genuine issue as to any material fact, that plaintiff's motion for summary judgment is hereby granted, and that judgment be entered accordingly.

Dated: Sept. 13, 1948.

/s/ PEIRSON M. HALL,

United States District Judge.

Dated this 2nd day of September, 1948.

ABE I. LEVY,

STEPHEN D. MONAHAN,

FRANK L. HIRST,

RICHARD G. SOLOF,

By /s/ BENJAMIN CHAPMAN,

Attorneys for Defendant.

BENT AND CLAPP.

By /s/ AUSTIN CLAPP,

Attorneys for Plaintiff.

(Acknowledgment of Service.)

[Endorsed]: Filed Sept. 14, 1948. [63]

In the District Court of the United States, Southern District of California, Central Division

No. 8078—PH

J. FONTECCHIO,

Plaintiff,

vs.

BEN C. KOEPKE, Individually, and as Area Rent Director, Los Angeles Defense-Rental Area, Office of Rent Control, Office of the Housing Expediter,

Defendant.

JUDGMENT

(For Declaratory Relief and Injunction)

Plaintiff having filed herein his motion for summary judgment in this cause, and both parties, being represented by counsel, having submitted the motion for decision upon all of the records and files of the above-entitled action, including all the affidavits filed therein, and counsel for both parties having submitted briefs, and the Court having fully considered all of said records, files, affidavits and briefs, and plaintiff's said motion having been granted,

It Is Ordered, Adjudged, and Decreed that there is no genuine issue as to any material fact; that on October 1, 1947, and at all times since that date, and at present, the premises hereinafter described were and have been, and are now being, used by plaintiff as a motor court within the meaning of the Housing [64] and Rent Act of 1947, and on and

since said date and at present said premises were not, and have not been, and are not controlled housing accommodations within the meaning of said Act; and that at all times since its effective date the said premises have been and are now being used by plaintiff as a motor court within the meaning of the Housing and Rent Act of 1948, and on and since said date and at present, said premises were not, and have not been, and are not controlled housing accommodations within the meaning of said Act; that the motor court premises above referred to consist of the lot known as 8012-8014 $\frac{3}{4}$ South Vermont Avenue in the City of Los Angeles, County of Los Angeles, State of California, with a one hundred foot frontage on that Avenue and extending one hundred forty-five feet easterly to an alley, together with the buildings and structures thereon, excepting therefrom certain portions of said lot and certain structures thereon described as:

(1) The westerly seventy-five feet of the north fifty feet of said lot which at all times mentioned herein have been and are being used by plaintiff and his son as a used car lot;

(2) The small building in the extreme north easterly corner of said lot which at all times mentioned herein has been and is being used by plaintiff as a real estate office; and

(3) The structures on said lot known as 8012, 8012 $\frac{1}{4}$, and 8014 $\frac{1}{4}$ South Vermont Avenue which at all times mentioned herein have been and are being used as living quarters by Pasquale Fontecchio, plaintiff's father, by Charles Fontecchio, plain-

tiff's son, and by Mary Woody, a tenant of the plaintiff, respectively.

It Is Further Ordered, Adjudged and Decreed that defendant, his agents, servants, and employees, and all persons acting in concert with him be, and they and each of them is hereby, permanently enjoined and restrained from doing, or from attempting to do, directly or indirectly, any of the following acts: [65]

(1) Issuing or purporting to issue the proposed or any order fixing or purporting to fix a maximum rent or rents for the motor court premises, herein described, or for any part thereof;

(2) Claiming or asserting that on October 1, 1947, or at any time since that date there was, or has been, or is a maximum rent for the motor court premises herein described, or for any part thereof;

(3) Taking any step or proceeding tending to or attempting to enforce any order such as is described in subparagraph (1) above or to enforce any claim or assertion such as is described in subparagraph (2) above.

It Is Further Ordered, Adjudged and Decreed that plaintiff have and recover of defendant his costs, taxes in the sum of \$.

Dated: Sept. 13, 1948.

/s/ PIERSON M. HALL,

United States District Judge.

Dated this 2nd day of September, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ BENJAMIN CHAPMAN,
Attorneys for Defendant.

BENT AND CLAPP,

By /s/ AUSTIN CLAPP,
Attorneys for Plaintiff.

Judgment entered Sept. 14, 1948. Docketed Sept.
14, 1948. Jdg. Book 52, Page 705.

(Acknowledgment of Service.)

[Endorsed]: Filed Sept. 14, 1948. [66]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Ben C. Koepke, the defendant above named, hereby appeals to the United States Circuit Court of Appeals for the 9th Circuit, from the order granting motion of the plaintiff for a summary judgment and from the

entire final judgment for declaratory relief and injunction entered in this action on the 14th day of September, 1948.

Dated this 21st day of October, 1948.

ABE I. LEVY,
STEPHEN D. MONAHAN,
FRANK L. HIRST,
RICHARD G. SOLOF,

By /s/ FRANK L. HIRST,
Attorneys for Defendant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Oct. 21, 1948. [67]

In the United States District Court for the Southern District of California, Central Division

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 73, inclusive, contain full, true and correct copies of Complaint; Petition for Removal; Order for Removal; Certificate of Clerk of the Superior Court; Affidavit of Tighe E. Woods, Housing Expediter, in Support of Motion to Dismiss; Answer; Motion for Summary Judgment with Supporting Affidavits; Affidavit of Ben C. Koepke in Opposition to Motion for Summary Judgment; Supplemental Affidavits of J. Fontecchio and Austin Clapp in Support of Motion for

Summary Judgment; Minute Order Entered July 19, 1948; Order Granting Motion for Summary Judgment; Judgment; Notice of Appeal; Appellant's Designation of Record on Appeal and Appellee's Designation of Additional Portions of Record on Appeal which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 29th day of November, A.D. 1948.

[Seal] EDMUND L. SMITH,
 Clerk.

[Title of District Court and Cause.]

**AFFIDAVIT OF TIGHE E. WOODS, HOUSING
EXPEDITER, IN SUPPORT OF MOTION
OF DEFENDANT, BEN C. KOEPKE, INDI-
VIDUALLY, AND AS AREA RENT DIREC-
TOR, LOS ANGELES DEFENSE-RENTAL
AREA, OFFICE OF THE HOUSING EXPE-
DITER, TO DISMISS THE COMPLAINT**

Tighe E. Woods, being first duly sworn, deposes and says:

That he is presently the duly appointed, qualified, and acting Housing Expediter of the Office of the Housing Expediter, pursuant to appointment as Acting Housing Expediter by the President of the United States in Executive Order dated November 1, 1947 (12 F.R. 7265), and by appointment during recess of the Senate on December 20, 1947, as Hous-

ing Expediter, that as such official, affiant is now and has been since said date of appointment, administering the powers, functions, and duties under the Housing and Rent Act of 1947 (50 U.S.C. App. Sec. 1881, et seq.), as is provided in Section 204(a) thereof; that his official residence now is and at all [17] times since November 1, 1947, has been in the City of Washington, District of Columbia; that his home is not in the State of California, and he is not an inhabitant thereof.

Affiant further says that at no time has he, as Housing Expediter, been personally served with summons or other process in the above-entitled action; that at no time has a copy of the summons or a copy of the Complaint, either or both, in the within action, been delivered to or left at the usual place of abode of affiant since institution of the within action, and that affiant, since his appointment, has at no time authorized or appointed any person his agent to accept or receive service of summons or other process for or on his behalf, in the within action, or in any other action.

/s/ TIGHE E. WOODS.

Subscribed and sworn to before me this 25th day of March, 1948.

[Seal] /s/ ALBERT C. ALLEN,
Notary Public in and for the City of Washington,
District of Columbia.

My Commission expires 10/31/51.

[Endorsed]: Filed Nov. 30, 1948. [18]

[Title of District Court and Cause.]

AFFIDAVIT OF J. FONTECCHIO IN SUP-
PORT OF MOTION FOR SUMMARY
JUDGMENT

State of California,
County of Los Angeles—ss.

J. Fontecchio, being first duly sworn, deposes and says:

That if I were called as a witness at the trial of the above-entitled action, I would testify as follows:

In 1936 affiant purchased in the names of himself and Sarah Fontecchio, his wife, the real property known as 8008-8014 $\frac{3}{4}$ South Vermont Avenue in the City of Los Angeles, County of Los Angeles, State of California; at the time of said purchase there were and ever since that time there have been and there now are certain buildings situated on said premises.

The property above described consists of a lot on the [29] east side of Vermont Avenue with a one hundred foot frontage on that Avenue extending one hundred forty-five feet easterly to an alley. The westerly seventy-five feet of the north fifty feet of this lot is used by affiant and his sons as a used car lot. The easterly seventy feet of the northerly half of this lot is separated from the used car lot by a fence and is black-topped with the exception of the space occupied by a small building and two garages in the extreme northeasterly corner of the

lot. This building is presently being used by affiant as a real estate office and the garages and the black-topped area are used as a parking space for the motor court accommodations hereinafter described. Prior to March 1, 1947, there were on the south fifty feet of this lot five buildings which were being used as housing accommodations. Four of these buildings were duplexes, each containing two separate housing units while the fifth building, on the extreme easterly end of this portion of the lot was a separate housing accommodation consisting of bedroom, kitchen and bath. In the extreme southeasterly corner of the lot were located three garages opening upon the alley to the east of the premises.

The housing accommodations in the five buildings above described were prior to March 1, 1947, numbered and designated as follows:

Commencing at Vermont Avenue and going easterly the northerly group of buildings were numbered as 8012, 8012 $\frac{1}{4}$, 8012 $\frac{1}{2}$, 8012 $\frac{3}{4}$ and 8012 $\frac{7}{8}$ South Vermont Avenue. Commencing at Vermont Avenue the southerly group of buildings were numbered as 8014, 8014 $\frac{1}{4}$, 8014 $\frac{1}{2}$ and 8014 $\frac{3}{4}$ South Vermont Avenue.

At all times since March 1, 1947, the premises known as 8012 South Vermont Avenue were and they now are occupied by Pasquale Fontecchio, the father of affiant.

At all times since March 1, 1947, the premises known as [30] 8012 $\frac{1}{4}$ South Vermont Avenue were

and they now are occupied by Charles Fontecchio, the son of affiant. Since October 1, 1947, the premises known as 8014 South Vermont Avenue were and they now are occupied by an employee of affiant acting as manager for the motor court accommodations operated by affiant since approximately October 1, 1947.

At all times since March 1, 1947, the premises known as 8014 $\frac{1}{4}$ South Vermont Avenue were and they now are occupied by a tenant of affiant, one Mary Woody.

Prior to March 1, 1947, the premises known respectively as 8012 $\frac{1}{2}$, 8012 $\frac{3}{4}$, 8012 $\frac{7}{8}$, 8014 $\frac{1}{2}$ and 8014 $\frac{3}{4}$ South Vermont Avenue were vacated by the persons who theretofore had occupied the same as tenants of affiant. During March, 1947, affiant went to the office of the Office of Temporary Controls, an agency of the United States then administering the rent control regulations issued under and by virtue of the Emergency Price Control Act of 1942, as amended and extended, at 1206 South Santee Street, Los Angeles, California, and at that time had the following conversation with a woman whose last name was and is Skinnell who was then and there an employee of the rent division of the Office of Temporary Controls. At that time and place a conversation took place between affiant and the said Skinnell in substantially the following words:

Affiant said "I've got a court here and I've got it all vacant and I want it turned into a motor court. Can I do it."

Skinnell said "Under the present law, you can do it provided that after you get them all rented you bring an exact sketch down showing what you did and register your rooms. You can put any price you want on them and register them in ten days."

Skinnell then gave affiant a blank form DHD which is a form used for the registering of rooms and units in auto courts among other classes of establishments and said "When you get them [31] all rented fill it out and on the reverse side put a sketch of the arrangement of your rooms. What you have to do is wait until the inspector comes out and looks at the premises and we will pass judgment on whether or not you can charge what you want. You are entitled to charge what you register until you hear from us."

Affiant said "Can I register it right now?"

Skinnell said "Wait until the units are rented."

After receiving this advice, affiant made certain alterations in the premises known as 8012 $\frac{1}{2}$, 8012 $\frac{3}{4}$, 8014 $\frac{1}{2}$ and 8014 $\frac{3}{4}$ South Vermont Avenue.

Before the alterations were made, each of the above numbered units consisted of a living-room, bedroom, kitchen and bath. The living-room and bedroom of each unit faced the interior of the Court. The kitchen and bath were on the sides of the building away from the interior of the court. Entrance to each of the housing units was through a door opening onto the interior of the court leading into the living-room. From the living room inte-

rior doorways led respectively into the kitchen and bedroom and from the bedroom an interior doorway led into the bathroom.

Affiant made the following alterations in each of these units: The interior door between the living-room and bedroom was removed and the opening was closed up making a solid wall between the former living-room and bedroom. A door was opened into the bedroom from the interior of the court so as to provide a private outside entrance for this room. A door was cut in the wall of the kitchen so as to provide access to a small hallway which in turn led to an additional door which was cut through the wall of the bathroom.

In each unit of the above numbered units, after the alterations there was a room and a kitchen with access to the bathroom and a room with access to the bathroom. Each of the doors into the bathroom were provided with locks so that guests in one [32] of the two newly created units could use the bathroom and ensure privacy as against the occupants of the other unit. A portion of the hallway into the bathroom from the kitchen was equipped so as to constitute a closet for use in conjunction with the unit consisting of room and kitchen. Each of the rooms in each of the altered units was provided with beds so as to be usable as a sleeping room.

No change was made in the construction of the building known as 80127 $\frac{7}{8}$ which was located at the easterly end of the northerly row of buildings. The

following table shows the former numbering of the housing units and opposite each number is the number assigned to the newly constructed unit for purposes of reference in the operation of the premises as a motor court:

Old Number—8012 $\frac{1}{2}$ South Vermont Avenue.
New Number—Unit 1, Room and kitchen; Unit 2, Room.

Old Number—8012 $\frac{3}{4}$ South Vermont Avenue.
New Number—Unit 3, Room; Unit 4, Room and kitchen.

Old Number—8012 $\frac{7}{8}$ South Vermont Avenue.
New Number—Unit 5, Room, kitchen and bath.

Old Number—8014 $\frac{1}{2}$ South Vermont Avenue.
New Number—Unit 6, Room and kitchen; Unit 7, room.

Old Number—8014 $\frac{7}{8}$ South Vermont Avenue.
New Number—Unit 8, Room; Unit 9, room and kitchen.

After completing these alterations, affiant purchased a neon sign consisting of the word "motel" and installed it on the lot immediately in front of the manager's office, known as 8014 South Vermont, in such a position that it could be seen by persons traveling in a northerly or southerly direction on Vermont Avenue. Ever since October 1, 1947, said sign has been and it still is displayed in said location.

Prior to March 15, 1946, the City Council of the

City of Los Angeles passed an ordinance, No. 90,500, amending certain [33] sections of the Los Angeles Municipal Code (Ordinance No. 77,000) of the City of Los Angeles, among which amendments were the following:

“Section 12.14: The following regulation shall apply in the C-2 Commercial Zone:

“A. Use—No building, structure, or land shall be used and no building or structure shall be hereafter erected, structurally altered, enlarged or maintained except for the following uses:

* * *

“42: Tourist court . . .”

Section 12.03, defining a “tourist court” as follows:

“A group of attached or detached buildings containing individual sleeping or living units, designed for or used temporarily by automobile tourists or transients, with garage attached or parking space conveniently located to each unit including auto courts, motels, or motor lodges.”

That said Ordinance No. 90,500 of the City of Los Angeles was approved on March 15, 1946, and ever since has been and now is in full force and effect as an ordinance of the City of Los Angeles. The real property herein described was at all times mentioned herein and still is within an area zoned by the City Council of the City of Los Angeles as a C-2 Zone in which it was and still is lawful to

conduct the business of operating a motor court or tourist court.

On or about October 1, 1947, affiant commenced operating the premises hereinabove described as a motor court. At all times since said date in connection with the occupancy of Units 1 to 9, inclusive, in said motor court, affiant has furnished to said guests furniture, linen, soap and services such as removal of garbage and trash and daily cleaning service. [34]

Since October 1, 1947, affiant has maintained in the regular course of the business of operating the said motor court a card register system consisting of cards upon which are spaces for recording the name and address of guests of the motor court, the car license number, the state of registration, the make of car, the number of persons, the unit number to which the guest is assigned, the rate charged for occupancy of the unit, the date of arrival and departure, the days occupied, the number of days charged for and the amount paid. At the time of registering the information on the card as to name and address, car and license number, state of registration, make of car, number of persons in the guest's party are supplied by the guest registering and recorded on the card. At this time affiant or his employees insert the unit number to which the guest is assigned, the rate to be charged for the unit and the date of arrival. The amount paid is also inserted at this time. Upon the guest's departure, the date of departure is recorded, the days

occupied is recorded, and the number of days of occupancy is recorded by affiant or his employees. These records are prepared and kept at the direction of affiant either by himself or by his employees and are kept and maintained as records of the business of conducting affiant's motor court. Since the commencement of operation of said motor court on or about October 1, 1947, to and including April 30, 1948, approximately 350 such cards have been prepared, kept and maintained. Attached hereto as Exhibit "A" hereof is a summary of data recorded on said cards showing the name of the guest, the town from which guest registered, whether or not the guest had an automobile, the date of registration and the date of departure, and the number of days of occupancy paid for by the guest. This summary was prepared by copying the items shown from the records referred to above. In some cases the signature of the guest was illegible. In such case a question mark in parentheses has been [35] placed after the guest's name. Where the record card affirmatively shows that the guest had no card or where the card does not show either way whether or not there was a car, the word "No" is placed in the column headed "Car." Where no notation appears, the card affirmatively shows that the guest did have a car. In some cases the number of days of occupancy paid for is less than the actual number of days during which the guest occupied his unit. This results from affiant's general rental practice of permitting one day free occupancy to guests

who stay seven days or more for each seven days of occupancy.

The original records cannot be examined at court without great loss of time. The evidence sought from them is only the general result of the whole so far as it indicates that said premises have been since October 1, 1947, and are being, used temporarily by automobile tourists or transients and that said premises have been since October 1, 1947, commonly known as a motor, auto or tourist court in the community.

The rates charged by affiant for said units have been uniformly \$3.50 or \$4.00 per day for the units consisting of sleeping room only, depending upon whether there were one or two occupants, and \$4.50 per day for the units which consist of sleeping room and kitchen. Four of the units consist of sleeping room only with a total occupancy rate of \$16.00 per day when occupied to capacity. There are five units with kitchen with a total occupancy rate of \$22.50 per day when occupied to capacity. The total occupancy rate for the motor court premises when filled to capacity is \$38.50 per day.

Defendant's notice of proceedings dated January 20, 1948, proposed to establish a total maximum occupancy rate for said premises when filled to capacity of \$13.75 per day.

After receiving defendant's notice of proceedings dated January 20, 1948, affiant filed objections in said proceedings, [36] described as Docket No. 262,-021 in the office of the defendant. Said objections

were in the words and figures contained in a copy thereof which is attached hereto and is by this reference made a part hereof as though herein fully set forth.

The Housing Expediter, Tighe E. Woods, was informed of this action prior to March 25, 1948, and on that date in the City of Washington, District of Columbia, executed an affidavit herein relating to his residence in the City of Washington and to the fact that he had not been served with summons and complaint herein. Said affidavit is incorporated herein by this reference and made a part hereof as though herein fully set forth.

Notwithstanding his knowledge of this action, the said Tighe E. Woods has not altered his erroneous interpretation of the provisions of the Housing and Rent Act of 1947 requiring a motor court to have been such on June 30, 1947, in order to be decontrolled under and by virtue of the provisions of said Act and on the contrary, with full knowledge of this action, said Housing Expediter issued on April 1, 1947, Amendment 27 to the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments expressly incorporating therein a provisions restricting decontrol of motor courts to those which were such on June 30, 1947.

By reason of the foregoing, affiant alleges that it would be futile to make any request of the said Tighe E. Woods to withdraw his interpretation or to alter his regulation so as to permit decontrol of affiant's accommodations under the express terms of the regulation.

EXHIBIT "A"

Summary of Rentals of Motor Court Units at Premises
8012-8014 7/8 South Vermont Avenue, Los Angeles, California.

STATISTICAL ANALYSIS

Number of Separate Rentals			No.	%
October 1, 1947 to April 30, 1948.....			272	100.00
Length of Guest Occupancy		No.	%	
One day only		226	83.09	
2 - 7 days		34	12.50	
8 - 14 days		5	1.84	
15 - 30 days		2	.73	
Over 30 days		5	1.84	
Totals.....			272	100.00
			272	100.00

EXHIBIT "A"

Unit No.	Guest	No. in Party	Registered From	Car	In	Out	Days Paid
<u>Oct. 1947</u>							
1	Nelson	2	Tulare		10/3	10/4	1
2	Harris	1	Los Angeles	No	10/3	10/4	1
	Rhodes	2	Wichita, Kansas	No	10/9	10/10	1
	Lopez	2	Los Angeles		10/11	10/12	1
	Earee	1	Pasadena		10/15	10/16	1
	Kelly	2	Los Angeles		10/16	10/17	1
	Alton	1	Riverbank		10/16	10/17	1
	Eldred	2	?		10/19	10/20	1
	Gordon	2	Santa Maria	No	10/21	10/22	1
	Baggett	2	Mesa, Arizona	No	10/23	10/24	1
	Harris, L. E.	2	Los Angeles	No	10/25	10/26	1
	Bonedonna	2	San Diego		10/26	10/27	1
	Preiss	1	El Segundo		10/28	10/29	1
	Potter	2	San Francisco	No	10/31	11/2	2
3	Hamilton	2	San Francisco		10/5	10/6	1
	Prochaska	4	Cleveland, Ohio		10/6	10/9	3
	Harris, H. H.	2	Long Beach		10/11	10/12	1
	Griffin & Alton	2	Painwell, Michigan	No	10/18	10/19	1
	Sinett	2	Studio City		10/25	10/26	1
	Duckworth & Pruitt	2	Los Angeles		10/30	10/31	1
4	Howard & Helman	2	Los Angeles	No	10/17	10/19	2
	Pruitt	2	S.S. Fairfield		10/31	11/1	1
5	Bone & Ford	2	Denver, Colorado		10/3	10/9	7
	Oden	2	Gothenberg, Nebraska		10/18	10/19	1
	Edwards	2	Mesa, Arizona		10/23	10/24	1
	Simmons	4/2ch.	Los Angeles		10/25	11/1	7
6	Helms	2	Los Angeles		10/3	10/4	1
7	Szkora	2	Los Angeles	No	10/7	10/8	1
	Saunders (7)	2	San Diego		10/8	10/9	1
					10/11	10/12	1
	Griffin	2	Painwell, Michigan	No	10/14	10/15	1
	Saunders (?)	2	San Diego		10/17	10/19	2
	Jones	2	Monterey Park		10/22	10/23	1
	Hillan	2	Banning		10/24	10/25	1
	McFarland	1	South Gate		10/25	10/26	1
					10/28	10/31	2
& 9	Peterson & family	4	Kansas City, Missouri		10/3	10/12	9
	Bennett	1	U. S.S. Helena	No	10/17	10/18	1
	Gollucci	2	San Diego		10/18	10/19	1
	Hogan	2	Compton		10/25	10/26	1
	Brown	2	U.S.S. Helena	No	10/17	10/18	1
	E. Collins	3/1ch.	Los Angeles		10/26	10/31	6
<u>Nov. 1947</u>							
	Diller	4	Los Angeles	No	11/8	11/9	1
	Neville	4	Los Angeles		11/19	11/30	11
	Bauer	1	Denver, Colorado	No	11/2	11/5	3
	Harris, E. H.	2	San Diego		11/5	11/6	1
	Maenaker	2	Nempe, Idaho		11/6	11/7	1
	Powers	1	Los Angeles	No	11/3	11/19	6
	Gardner	2	Los Angeles	No	11/22	11/23	1
	Cote	2	Los Angeles	No	11/26	11/27	1
	Carroll	2	Los Angeles	No	11/1	11/2	1
	(Bauer	1	Denver, Colorado		11/5	11/16	6
	(Sullivan	2	Baker		11/8	11/9	1
	Yuengst & Roth	2	Phoenix, Arizona		11/21	11/22	1
	Pennington	2	Shreveport, La.		11/26	11/27	1
	Schuey	1	Denver, Colorado		11/27	12/1	4



Unit No.	Guest	No. in Party	Registered From	Car	In	Out	Day
Nov. 1947 (cont'd.)							
	Brandon	4/2ch	Los Angeles		11/3	11/4	1
	Roberts	2	National City		11/8	11/9	1
	Ferguson & Tucker	2	Los Angeles		11/18	11/26	9
	Simmons, L. E.	4/2ch	Los Angeles	No	11/4	11/9	5
	Madden	3	Los Angeles		11/17	11/22	5
	Cole	3	Los Angeles		11/27	12/2	5
	Jolly	1	Point Mugu		11/8	11/9	1
	Hammett	2/1ch	Los Angeles		11/14	12/3	17
	Campbell	2	San Diego	No	11/1	11/2	1
	Anthony	2	San Diego		11/7	11/8	1
	Lewis	2	Los Angeles	No	11/8	11/9	1
	Carnero	2	Los Angeles		11/10	11/11	1
	Farr	1	Denver, Colorado		11/19	11/28	7
	Maenaha	1	Los Angeles		11/7	11/8	1
	Flynn (?)	2	Los Angeles		11/8	11/9	1
	Buscarone	2	Los Angeles		11/15	11/16	1
	Stone	2	San Pedro		11/20	11/21	1
	Carroll	2	Los Angeles		11/21	11/22	1
	Paulsen	2	San Leandro		11/22	11/23	1
	Cote	2	Los Angeles	No	11/27	11/29	2
	Collins	4/1ch	Los Angeles		11/2	11/30	20
Dec. 1947							
	Brack	2	Los Angeles	No	12/6	12/7	1
	Kinney	2	San Diego	No	12/13	12/14	1
	Hazeldon	2	Los Angeles	No	12/27	1/1	5
	Parsons	2	Los Angeles	No	12/6	12/7	1
	Karverd (?)	2	Oklahoma City, Oklahoma	No	12/7	12/8	1
	Arant (?)	2	Gardena		12/9	12/10	1
	Cromwell	2	Los Angeles		12/12	12/13	1
	Carter	1	San Diego		12/13	12/14	1
	Senker	2	San Diego		12/17	12/18	1
	Frenner (?)	2	Los Angeles		12/17	12/18	1
	Carpenter	2	Waukegan, Michigan		12/18	12/19	1
	Basarab	2	El Low		12/21	12/22	1
	Comez	2	San Bernardino	No	12/23	12/24	1
	Basarab	2	El Low		12/24	12/25	1
	Wonegan	2	Woods Cross, Utah		12/31	1/1	1
	Galap	2	Los Angeles	No	12/17	12/18	1
	McKittrick	1	Fairfield		12/19	12/20	1
	Dixon	2	San Diego		12/30	12/31	1
	Anderson & Bummitt	2	Oceanside		12/31	1/1	1
	Ferguson & Tucker		Los Angeles	No	12/27	12/30	32
	Goring	2	San Francisco		12/3	12/4	1
	Harris, L. E.	4/2ch	Los Angeles	No	12/15	12/31	16
	Hammett	3/1ch	Los Angeles		12/3	12/12	7
	Anderson	3/1ch	Courtenay, North Dakota		12/30	1/1	2
	Turnbull	2	Los Angeles		12/3	12/4	1
	Haibu (?)	2	North Hollywood		12/9	12/10	1
	Allen	2/1ch	San Pedro		12/10	12/11	1
	Dobson	2	Los Angeles		12/13	12/14	1
	Nelson	1	Clearwater		12/17	12/18	1
	Molloy	2	Owasso, Michigan		12/18	12/19	1
	Wilson	1	Commerce, Texas	No	12/21	12/22	1
	Badovinac	2	Detroit, Michigan		12/27	12/28	1
	Wonegan	1	Woods Cross, Utah		12/31	1/1	1



Unit No.	Guest	No. in Party	Registered From	Car	In	Out	Day Paid	
Dec. 1947								
(cont'd.)								
	Figuerido	2	Riverside	No	12/6	12/7	1	
	Brown	1	Richmond		12/13	12/14	1	
	Costello	2	New York City		12/17	12/18	1	
	Collins	3/1ch	Los Angeles		11/30	12/30	29	
	Juan	3	Windom, Minnesota		12/17	12/18	1	
Jan. 1948								
	Hazeldon	2	Los Angeles	No	1/1	1/4	3	
	Wilson	3	Los Angeles		1/9	2/2	24	
	Allen	2	Long Beach		1/1	1/2	1	
	Cabner	2	Burbank		1/3	1/4	1	
	Brake	2	Woodlake	No	1/8	1/9	1	
	Parsons	2	Los Angeles		1/10	1/11	1	
	Strong	2	Riverside		1/11	1/12	1	
	Rockhold	2	San Francisco		1/13	1/14	1	
	Lee	1	Los Angeles	No	1/16	1/17	1	
	Fstes	1	San Diego		1/21	1/22	1	
	McQuellen	2	Pt. Mugu		1/24	1/25	1	
	Welter	2	San Diego		1/27	1/29	2	
	Pennington	2	Shreveport, La.	No	1/30	1/31	1	
	Legan	1	Los Angeles		1/31	2/1	1	
	Snedeker (?)	2	San Diego		1/1	1/2	1	
	Ashley	1	Los Angeles		1/9	1/10	1	
	Alton & Woodley	2	Riverbank	No	1/10	1/11	1	
	Wilkins	2	Pittsburgh, Pa.		1/16	1/17	1	
	Livermore	1	Alameda		1/24	1/26	2	
	Paysen	1	Anaheim		1/28	1/30	2	
	Long	2	Long Beach	No	1/30	1/31	1	
	Schwartz	2	Compton		1/31	2/1	1	
	Ferguson	2	Los Angeles		1/1	1/6	5	
	Morse	2	Londen, Texas		1/10	1/11	1	
	Kohlmeier	2	Los Angeles	No	1/11	1/31	19	
	Harris	2/2ch	Los Angeles		12/31	1/13	13	
	Manton	2	Los Angeles		1/24	1/25	1	
	Reeve	2	Los Angeles		1/31	2/1	1	
	Anderson	2/1ch	Courtenay, North Dakota	No	1/1	2/2	33	
	Bellon	2	South Bend, Indiana		1/2	1/3	1	
	Pennington	2	Shreveport, La.		1/10	1/11	1	
	Upstam	1	San Bernardino		1/14	1/15	1	
	Samudi	2	Bakersfield	No	1/16	1/17	1	
	Hamilton	2	Bakersfield		1/24	1/25	1	
	Clark	2	San Bernardino		1/28	1/29	1	
	Moody	2	San Pedro		1/31	2/1	1	
	Paris	2	San Fernando	No	12/31	1/3	3	
	Allsep	1	Riverbank		1/10	1/11	1	
	Maloof	2	Los Angeles		1/15	1/16	1	
	Carlyle	2	San Diego		1/16	1/17	1	
	Cuccimani	2	Los Angeles	No	1/24	1/25	1	
	Ed Collins	2/1ch	Los Angeles		12/30	1/11	12	
	Austin	2	Los Angeles		1/22	1/23	1	
	Cafood	2	San Francisco		1/24	1/25	1	
	Anderson	2	San Diego	No	1/28	1/31	3	
1948								
	Wilson	2/1ch	Los Angeles		No	2/2	2/16	12
	Hanard	2		2/21		2/22	1	
	Deville	2	San Francisco	2/28		2/29	1	
	McWilliams	1	Los Angeles	2/3		2/6	3	
	Sephar & Wilson	2	Akron, Ohio	No	2/7	2/8	1	
	Kennedy	1	Los Angeles		2/9	2/10	1	
	Oliver	1	San Francisco		2/12	2/13	1	
	Newton	2	Fresno		2/14	2/15	1	
	Morris	1	Glendale	No	2/17	2/18	1	

Unit No.	Guest	No. in Party	Registered From	Car	In	Out	Days Paid
Feb. 1948							
Cont'd.)	Payne	1	Thermal		2/20	2/21	1
	Papst	1	Culver City	No	2/21	2/22	1
	Somerville	1	Los Angeles	No	2/22	2/23	1
	Zumger	1	San Francisco	No	2/28	2/29	1
	Strulz	2	Los Angeles		2/28	3/1	1
	Stafford	2	Elk City, Okla.		2/2	2/3	1
	Stevens	2	San Francisco		2/4	2/5	1
	Heneker	2	San Francisco (?)		2/5	2/6	1
	Lombard	1	Los Angeles		2/6	2/7	1
	Stevens	2	Pasadena	No	2/7	2/8	1
	Class	2	Long Beach	No	2/14	2/16	2
	Bailey	1	Oceanside	No	2/20	2/21	1
	Johnson	2	Los Angeles	No	2/21	2/22	1
	Chilson	2	Chicago, Illinois		2/28	2/29	1
	Kohlmeier	2	Los Angeles	No	2/1	2/25	21
	Lovell	2	Las Vegas	No	2/4	2/5	1
	Morton	2	Los Angeles	No	2/7	2/12	5
	Johnson	1	Palmyra, Pa.		2/14	2/16	2
	Stevens	2	Pasadena	No	2/21	2/23	2
					2/28	2/29	1
	Anderson	2/1ch	Courtenay, W. D.		2/3	2/15	9
	Jones	2	Roseburg, Oregon	No	2/21	2/22	1
	McAren	2	Tan Oak Park	No	2/4	2/5	1
	Bummett & Bailey	2	Oceanside	No	2/7	2/8	1
	King	1	Spring Valley		2/9	2/10	1
	Stevenson	2	Las Vegas		2/11	2/12	1
	Dupree	2	San Fernando		2/12	2/13	1
	Pennington	2	Shreveport, La.	No	2/13	2/14	1
	Sprool	2	Long Beach		2/14	2/15	1
	Trabert	2	Garden City, Kansas	No	2/19	2/20	1
	Potter	2	Los Angeles		2/20	2/21	1
	Ewing	2	Los Angeles		2/21	2/22	1
	Phillips	2	Wasco		2/22	2/23	1
	Carpenter	2	Phoenix, Arizona		2/26	2/27	1
	Fule	1	Los Angeles		2/27	2/28	1
	Erskine	2	Los Angeles		2/28	2/29	1
	Squillace	1	Utica, N.Y.	No	2/1	2/8	6
	Husos	3	Minneapolis, Minn.	No	2/14	2/15	1
	Kirkpatrick & Bowers	2	Oceanside	No	2/20	2/21	1
	Pennington	2	Shreveport, La.	No	2/21	2/22	1
	Hallen	1	San Diego	No	2/22	2/23	1
	Pennington	2	Shreveport, La.	No	2/28	2/29	1
	Bartaletti	2	Utica, N.Y.	No	2/1	2/8	7
	Searcy	2	Santa Monica		2/14	2/15	1
	Marzullo	2	San Francisco		2/21	2/22	1
March 1948							
	Green	4	Los Angeles		3/28	4/2	5
	Hise	1	Berkeley	No	3/3	3/4	1
	Stevens	2	San Diego		3/6	3/7	1
	Albanese	1	Medina, N. Y.		3/14	3/15	1
	Smith	2	San Francisco	No	3/16	3/17	1
	Hickman	2	Roseville		3/17	3/18	1
	Allen	2	Oceanside	No	3/19	3/20	1
	Hoover	2	Washington		3/23	3/24	1
	Warner	2	San Diego		3/20	3/21	1
	Banks	2	Los Angeles	No	3/27	3/28	1

Unit No.	Guest	No. in Party	Registered From	Car	In	Out	Days Paid
March, 1948 cont'd)							
	Hanson	1	San Diego		3/6	3/7	1
	Stone	1	San Pedro	No	3/11	3/12	1
	Jackson	2			3/16	3/17	1
	James	2	Provo, Utah		3/17	3/18	1
	Heine	2			3/19	3/20	1
	Braun	1	Los Angeles	No	3/20	3/21	1
	Adrelman	1	Oakland	No	3/27	3/28	1
	Sharp	2	Hammond, Indiana		3/29	3/30	1
also 4)	Pennington	2	Shreveport, La.	No	3/30	3/31	1
also 4)	Secley	2	Berkeley		3/25	3/26	1
	Stevens	2	Pasadena	No	3/1	3/2	1
					3/8	3/9	1
	Ryan & Stoner	2	Riverside		3/14	3/15	1
	Smith	2	Los Angeles	No	3/15	3/20	5
	Smith	2	Indio		3/22	3/29	7
	Cunningham	2	Glendale		3/5	3/6	1
	Stevens	2	San Bernardino		3/6	3/7	1
	Phelps	2	San Diego		3/12	3/13	1
	Stevens	2	Pasadena		3/13	3/14	1
	Wiscombe	2	Pasadena		3/15	3/16	1
	Kwani	2	Provo, Utah		3/17	3/18	1
	Mullahy	1	San Francisco	No	3/20	3/21	1
	Dulingham	1	Los Angeles	No	3/22	3/29	7
	Williams & Anderson	2	Los Angeles	No	3/31	4/1	1
	Stoner	2	Oceanside	No	3/5	3/7	2
	Cook	1	Los Angeles		3/13	3/14	1
		1	San Diego		3/16	3/17	1
April, 1948							
	Green	4	Los Angeles		4/2	4/11	8
	Kelley	2	St. Louis, Missouri		4/10	4/11	1
	Sloan	2	San Diego		4/23	4/24	1
	Banks	2	Los Angeles	No	4/24	4/25	1
	Rodriguy	2	Colton		4/2	4/3	1
	Banks	2	Los Angeles	No	4/3	4/4	1
	Odom	2	Huntington Park	No	4/10	4/11	1
	Smith	2	Camp Kendall	No	4/17	4/18	1
	Alton & Woodly	2	Camp Pendleton	No	4/23	4/25	1
	Stevens	2	Pasadena	No	4/25	4/26	1
	Stevens	2	Pasadena	No	4/10	4/11	1
					4/13	4/14	1
					4/17	4/18	1
	Nelson	2	San Diego		4/24	4/26	2
	Stevens	2	Pasadena		4/26	4/27	1
	Demosthenes	2	San Francisco		4/3	4/4	1
	Oliviri	2	San Francisco		4/3	4/4	1
	Banks	2	Los Angeles		4/10	4/11	1
	Lewis	2	Oakland		4/14	4/15	1
	Wosstell	2	Toledo, Ohio		4/16	4/17	1
	Pica	2	Los Angeles	No	4/12	4/13	1
	Kevari	2	San Francisco	No	4/17	4/19	2
	Field	2	Chicago, Illinois		4/21	4/22	1
	Brown	2	Huntington Park	No	4/22	4/23	1
	Kevari	2	San Francisco	No	4/24	4/25	1
	Gee	1	Nodami, Iowa	No	4/25	4/26	1
	Moxer	1	Los Angeles		4/26	4/27	1
	Hymans	1	San Diego	No	4/2	4/3	1
	Moody	2	Petersburg, W. Va.		4/3	4/4	1
	Lowry	1	Pomona	No	4/10	4/11	1
	Metz	1	Los Angeles		4/11	4/12	1
	Garden	2	Las Vegas		4/17	4/18	1
	Heins	1	Camp Pendleton		4/23	4/24	1
	Warren	2	Los Angeles		4/3	4/8	1

Before the Area Rental Director, Los Angeles Defense Rental-Area, Office of the Housing Expediter.

Docket No. 262021

In the Matter of Proceedings to Fix a Maximum Rent for 8012-8014 South Vermont Avenue, Los Angeles, California.

J. FONTECCHIO, LANDLORD

State of California,
County of Los Angeles—ss.

J. Fontecchio, being first duly sworn, deposes and says:

That he has heretofore received the notice of proceedings by the Rent Director proposing to reduce the rents of the above-mentioned housing accommodations under Section 5(c)(1) of the Rent Regulation.

Affiant objects to the issuance of any such order on the ground that the premises above mentioned are a motor court within the meaning of that term as used in the Housing Rent Act of 1947, and the Rent Director has no power, authority or jurisdiction to issue any order fixing maximum rents for said accommodations.

In approximately March of 1947, the premises, which had theretofore been a bungalow court, were vacated by the tenants as affiant proposed to convert the said accommodations into a [44] motor

court. At that time he inquired of the staff of the Area Rent Director and was advised that that could be done.

In accordance with this advice, affiant made eight (8) units out of what had previously been four (4) units, so arranging them that half of the units consisted of a bedroom and kitchen, while the other half consisted of a sleeping room only, the occupants of each of said units sharing the bathroom.

Each of said units has a separate entrance.

Immediately adjacent to the accommodations is 4,000 square feet of parking space, black topped, and in addition there are five (5) garages on the rear of the lot which can be and are used, as well as the parking space, by guests of the motor court.

The alterations necessary to convert these accommodations and to create additional accommodations by such conversion was commenced after February 1, 1947, and was not completed until approximately October 1, 1947.

Prior to commencing operations as a motor court, affiant purchased a neon sign, reading "Motel," which is placed in front of the property next to that part of the property in which affiant lives and which affiant also uses as the manager's office.

Since October 1, 1947, occupancy of the said units has been almost exclusively transient, thus in October, 1947, 40 different guests stayed one day, 4 stayed five days, and 2 stayed six days. In November, 1947, 33 stayed one day, 11 stayed two days, 2

stayed three days, 2 stayed four days, 9 stayed five days, and 2 stayed six days.

In December, 1947, 25 stayed one day, 15 stayed two days and 14 stayed five days.

In January, 1948, up to January 24, 1948, 42 stayed one day, 8 stayed two days, 1 stayed three days and 12 stayed five days. [45]

Affiant furnishes furniture, linen, soap, and cleans each unit each day.

Affiant operates said accommodations in all respects as any other motor court is operated in Southern California.

The actual cost of operation of each unit, including licenses, insurance, real property taxes, utilities, the operation of the sign, laundry and supplies, cleaning and depreciation, without any allowance for management, is \$1.72 per day, which is less than the amount proposed by the Area Rent Director to be allowed per day for the rental of these units. This figure is arrived at as follows:

DAILY COST

2 bath towels.....	.10
2 sheets24
2 pillow slips.....	.16
2 hand towels.....	.08
1 bath mat.....	.08
2 face cloths.....	.06
soap05
room cleaning.....	30

\$1.27

Pro rata share of utilities, insurance, taxes, licenses.....	.235
Depreciation on real property.....	.21 $\frac{2}{3}$
<hr/>	
Total	\$1.72

Affiant registered these accommodations on or about October 9, 1947, and at the time he registered the same he wrote upon the form containing his registration that said premises were on auto court. At that time, a Miss Regan, an employee of the Area Rent Director, told him that he could not register that way and she erased the words "auto court" from the registration and inserted instead some other classification. That this act on the part of the said Regan was and is erroneous and said registration should be corrected to reflect its original condition.

Affiant has filed herewith his application for decontrol [46] of said accommodations.

Wherefore, affiant requests that proceedings in the foregoing docket number be terminated and no order issue and that his application for decontrol be approved and that he be recognized as a motor court.

[Endorsed]: Filed May 28, 1948. [47]

[Title of District Court and Cause.]

AFFIDAVIT OF AUSTIN CLAPP IN SUP-
PORT OF MOTION FOR SUMMARY JUDG-
MENT

State of California,
County of Los Angeles—ss.

Austin Clapp, being first duly sworn, deposes and
says:

That I am an attorney at law duly licensed to
practice in all of the courts of the State of Califor-
nia and in this court. Prior to February 19, 1948,
I was employed by the plaintiff in this action to
represent him in connection with the proposed ac-
tion of the defendant to issue an order establishing
maximum rents for the accommodations in plain-
tiff's motor court.

Edwin D. Hamlin is Chief Area Rent attorney
for the Los Angeles Defense-Rental Area of the
Office of Rent Control of the Office of the Housing
Expediter. [48]

I have known Mr. Hamlin for some time and I
am familiar with his voice. On or about February
16, 1948, I called Mr. Hamlin at his office on the
telephone and requested him to review the file be-
ing Docket No. 262021 and advise me whether or not
he would recommend that the proposed order be
withheld. On or about February 18, 1948, Mr. Ham-
lin telephoned me at my office. I recognized the
voice I heard over the telephone to be that of Ed-

win D. Hamlin. At that time he and I had a conversation in substantially the following words:

Hamlin said "I have reviewed the file and I do not believe that Mr. Fontecchio's premises are eligible for decontrol."

I said "You are still relying on the Washington interpretation that a motor court must have been such on June 30, 1947, in order to qualify for decontrol."

Hamlin said "Yes."

I said "I intend to file an action for declaratory relief and injunction to decide this matter and I wonder if it would be possible to withhold any order until such time as the legal question can be decided by the Court."

Hamlin replied "It would not be possible for us to enter into any such stipulation."

I said "Then it would be necessary for me to secure a temporary restraining order against the issuance of your order."

/s/ AUSTIN CLAPP.

Subscribed and sworn to before me this 27th day of May, 1948.

[Seal] /s/ EARL A. LYON,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires June 7, 1949.

(Duly Verified.)

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed May 28, 1948. [49]

[Endorsed]: No. 12104. United States Court of Appeals for the Ninth Circuit. Ben C. Koepke, Individually, and as Area Rent Director, Los Angeles Defense-Rental Area, Office of Rent Control, Office of the Housing Expediter, Appellant, vs. J. Fontecchio, Appellee. Transcript of Record. Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed November 30, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12104

BEN C. KOEPKE, Individually, and as Area Rent Director, Los Angeles Defense-Rental Area, Office of Rent Control, Office of the Housing Expediter,

Appellant,

vs.

J. FONTECCHIO,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON
APPEAL

The District Court erred in:

1. Granting plaintiff's motion for summary judg-

ment because there were definite issues of fact presented by the pleadings.

2. Entering judgment against the defendant on the ground that the premises herein were not controlled housing accommodations but were exempt within the meaning of Section 202(c)(2) of the Act.

3. Granting judgment for the plaintiff and restraining defendant in the performance of his official duties since the plaintiff has had an adequate remedy at law.

4. Granting judgment against the United States, the real party in interest, in an action in which it had not consented to be sued.

5. Granting judgment for the plaintiff herein because Tighe E. Woods, the Housing Expediter, was an indispensable party to this action but was not joined as a party.

6. Failing to dismiss the complaint against the defendant on the ground that it failed to state a claim upon which relief could be granted.

7. Granting judgment for the plaintiff.

Dated this 8th day of December, 1948.

/s/ FRANCIS X. RILEY,
Special Litigation Attorney.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed December 10, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD
ON APPEAL

Appellant, Ben C. Koepke, individually, and as Area Rent Director, Office of the Housing Expediter, hereby designates the following portions of the Record to be included in the Record on Appeal.

1. The complaint filed in the Superior Court of the State of California, in and for the County of Los Angeles, No. 540994.

2. Answer in United States District Court, No. 8078-PH.

3. Motion for summary judgment filed by plaintiff.

4. Affidavit of Ben C. Koepke filed June 4, 1948.

5. Supplemental affidavit of J. Fontecchio, filed June 7, 1948.

6. Supplemental affidavit of Austin Clapp, filed June 7, 1948.

7. Minute order by Peirson Hall, District Judge, filed July 19, 1948.

8. Judgment in United States District Court.

9. Order granting motion for summary judgment.

10. Notice of Appeal.

11. This designation of Record.

Dated this 8th day of December, 1948.

/s/ FRANCIS X. RILEY,

Special Litigation Attorney,
Attorney for Appellant.

[Endorsed]: Filed December 10, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPELLEE'S DESIGNATION OF ADDI-
TIONAL PORTIONS OF THE RECORD ON
APPEAL

Appellee, J. Fontecchio, having been served with appellant's Designation of Record on Appeal, hereby designates the following additional portions of the record to be included in the record on appeal:

(1) Affidavit of Tighe E. Woods, dated March 25, 1948, in support of motion of Ben C. Koepke to dismiss;

(2) Affidavit of J. Fontecchio together with exhibits to said affidavit in support of motion for summary judgment;

(3) Affidavit of Austin Clapp in support of motion of summary judgment.

Dated: December 17, 1948.

BENT AND CLAPP,
By AUSTIN CLAPP,
Attorney for Appellee.

[Endorsed]: Filed December 18, 1948. Paul P. O'Brien, Clerk.